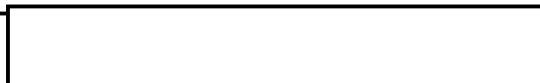


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FPM LTR. NO. 630-23

UNITED STATES CIVIL SERVICE COMMISSION

FEDERAL PERSONNEL MANUAL SYSTEM

LETTER

Washington, D.C. 20415

October 11, 1974

FPM LETTER NO. 630-23

SUBJECT: Revised FPM Subchapter - Absence for Maternity Reasons

Heads of Departments and Independent Establishments:

Attached is a complete revision of the current guidelines on Maternity Leave (Basic FPM and FPM 990-2, Book 630, Subchapter S13). The revised subchapters have been designed to eliminate those provisions which appeared to suggest or generate different treatment for pregnant employees as compared with treatment of employees in general who experience temporary disabilities requiring extended absence from duty.

Significant changes are highlighted below:

Old Guidelines

1. Cite approximately 14 weeks absence; usually six weeks before and eight weeks after delivery.
2. Recommend that advance sick leave usually should be denied; exceptions can be made.
3. Contain no statement of assurance of continued employment during or after absence for maternity reasons.

New Guidelines

1. No specified time cited; length of absence to be determined by employee, her physician and her supervisor.
2. Advance of sick leave not specifically mentioned. Guidelines state that same leave policies, regulations and procedures should apply as are applicable to requests for leave generally.
3. Emphasis on agency responsibility for assuring continued employment in her position or one of like seniority, status and pay.

INQUIRIES: Pay and Leave Administration Section, Bureau of Policies and Standards, code 101, ext. 25604 or 63-25604

CSC CODE 630, Absence and Leave

DISTRIBUTION: FPM

FPM Ltr No. 630-23 (2)

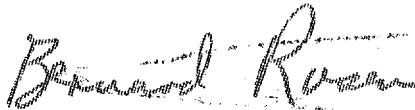
4. Subchapter is entitled "Maternity Leave" and this term is used throughout.

4. The subchapter is entitled "Absence for Maternity Reasons." The previous designation led to great confusion in employees' minds and many felt that a separate kind of leave existed apart from sick leave, annual leave and leave without pay.

Additionally, the new guidelines have eliminated all references to any activity by an agency which would be inconsistent with actions they might otherwise take when dealing with the temporary medical incapacitation of an employee.

This new subchapter contains a section entitled, Absence for Paternity Reasons. Organizations expressed a significant amount of support for inclusion of this section which recognizes the joint role of parents in child-rearing activities. Finally, the guidelines prepared for FPM Supplement 990-2 include a section summarizing the Supreme Court decision (No. 72-777) concerning policies on leave for maternity reasons which were reported in Bulletin 630-26 dated May 2, 1974. This advance edition is being furnished to assist agencies in expediting a review of their internal personnel policies relating to this subject.

Attachments


Bernard Rosen
Executive Director

Chapter 630. Federal Personnel Manual

Subchapter S13. Absence for Maternity Reasons

S13-1. INTRODUCTION

The following guidelines relating to absence for maternity reasons are published here as a reference for agencies in reviewing or establishing appropriate policies on this subject.

S13-2. GENERAL

- a. Pregnancy is a condition which eventually requires the employee to be absent from the job because of incapacitation. An absence covering pregnancy and confinement is to be treated like any other medically certified temporary disability.
- b. The granting of leave for maternity reasons within the Federal government is a combination of as many as three separate kinds of leave: sick leave, annual leave and leave without pay. Agencies must apply the same leave policies, regulations and procedures as are applicable to requests for leave generally.
- c. Sick leave may be used to cover the time required for physical examinations and to cover the period of incapacitation. After delivery and recuperation, the employee may desire a period of adjustment or need time to make arrangements for the care of the child. Such additional leave requirements may be taken care of by the use of available annual leave or leave without pay.

S13-3. EMPLOYEE AND AGENCY RESPONSIBILITIES

- a. Employee responsibility. (1) An employee should make known her intent to request leave for maternity reasons including the type of leave, approximate dates and anticipated duration to allow the agency to prepare for any staffing adjustments which may be necessary.
(2) An employee may be required to submit an application for sick leave, annual leave or leave without pay in accordance with agency policy.
- b. Agency responsibility. (1) The agency's overall objective should be to provide gainful employment and make use of skills for as long as the employee is not incapacitated for duty.

Attachment 1 to FPM Ltr. 630-23 (2)

(2) An agency should always be aware of any working conditions which could have an adverse effect upon employees with various physical conditions. If any of these elements could have a harmful effect on the pregnant employee, it may be suggested that she consult her own physician on this matter.

(3) If after consulting her physician, the employee requests modification of her work duties or a temporary reassignment, every reasonable effort should be made to accommodate her request.

513-4. CONTINUED EMPLOYMENT

a. Employees planning to return to work. The agency has an obligation to assure continued employment in her position or a position of like seniority, status and pay, to the employee who wishes to return to work following delivery and confinement, unless termination is otherwise required by expiration of appointment, by reduction in force, for cause, or for similar reasons unrelated to the maternity absence.

b. Employees not planning to return to work. An employee who is not planning to return to work should submit her resignation at the expiration of her period of incapacitation or she may be separated at such earlier date as may be required for other reasons, e.g., expiration of appointment or reduction in force, for cause, or for similar reasons unrelated to the maternity absence.

513-5. ABSENCE FOR PATERNITY REASONS

A male employee may request only annual leave or leave without pay for purposes of assisting or caring for his minor children or the mother of his newborn child while she is incapacitated for maternity reasons. Approval of leave for this reason should be consistent with the agency's policy for granting leave in similar situations, and each leave request should be considered on its own merits.

Book 630. FPM Supplement 990-2

Subchapter S13. Absence for Maternity Reasons

13-1. INTRODUCTION

The following guidelines relating to absence for maternity reasons are published here as a reference for agencies in reviewing or establishing appropriate policies on this subject.

S13-2. GENERAL

a. Pregnancy is a condition which eventually requires the employee to be absent from the job because of incapacitation. As a means of accommodating this temporary incapacitation, appropriate leave is granted to the employee; however, it should be recognized there is not a separate "maternity leave" as a type of leave. To the extent available, sick leave may be used to cover the time required for physical examinations and to cover the period of incapacitation. An absence covering pregnancy and confinement is to be treated like any other medically certified temporary disability.

b. After delivery and recuperation, the employee may desire a period of adjustment or need time to make arrangements for the care of the child. Such additional leave requirements may be taken care of by the use of available annual leave or leave without pay.

S13-3. PROVISIONS OF LAW, REGULATIONS AND GUIDELINES

a. Categories of Leave.

The granting of leave for maternity reasons within the Federal government is a combination of as many as three separate kinds of leave: sick leave, annual leave and leave without pay.

(1) The sick leave regulations published by the Civil Service Commission state: "An agency shall grant sick leave to an employee when the employee: (a) Receives medical treatment; (b) Is incapacitated for the performance of duties by . . . pregnancy and confinement. . . ." (Section 630.401)

(2) The law states that "The annual leave provided by this subchapter, including annual leave that will accrue to an employee during the year, may be granted at any time during the year as the head of the agency concerned may prescribe" (5 U.S.C. 6302(d)).

"Annual leave is provided and used for two general purposes which are:

(1) To allow every employee an annual vacation period of extended leave for rest and recreation, and (2) To provide periods of time off for personal and emergency purposes." (FPM Supplement 990-2, Book 630, S3-4).

Attachment 2 to FPM Ltr. 630-23 (2)

(3) Authorizing leave without pay is a matter of administrative discretion on the part of each agency. Normally leave without pay is granted only at the request of the employee. The Leave Without Pay Subchapter in the Federal Personnel Manual contains guidance on its use.

b. Supreme Court Decision

On January 21, 1974, the Supreme Court rendered its decision in the case of Cleveland Board of Education et. al., v. LaFleur et. al., (No. 72-777). This case involved the school board of Cleveland, Ohio which required every pregnant school teacher to take unpaid maternity leave five months before the expected birth of her child. She was not allowed to return to work until the next regular semester after her child was three months old.

The Court found that the arbitrary cut-off dates, which failed to take into account the individual woman's physical condition, were unconstitutional. The court accepted the fact that while pregnancy results in temporary disability, any actual disability affecting employment must be considered on an individual basis.

This decision has been interpreted by the Commission as specifically impacting upon the Federal Service.

While agencies may still require notice substantially in advance for the use of leave, when considering requests for sick leave, annual leave and leave without pay for maternity reasons, agencies must apply pertinent leave regulations and internal policies and practices in the same way they would apply them in any other case.

Any arbitrary cut-off dates which require an employee to cease work or prevent an employee from returning to work without recognizing the physical capability of the employee to perform the duties of the job are unconstitutional, and must be eliminated from the agency's policies and practices. An agency may establish with the employee, a firm date for the leave to begin. However, if the agency and the employee cannot agree upon a date, and the agency establishes a particular date, it must document the reasons for its preference. The burden of reasonableness in this regard lies with the agency.

313-4. EMPLOYEE AND AGENCY RESPONSIBILITIES

a. Employee responsibility (1) An employee should make known her intent to request leave for maternity reasons including the type of leave, approximate dates and anticipated duration. This will allow the agency to prepare for any staffing adjustments which may be needed to compensate for the anticipated absence from work.

(2) In connection with a need for hospitalization or extended recurring treatment for any condition requiring medical attention an employee must file a written application for sick leave within such time limits as the agency may prescribe. (Civil Service Regulation 630.402). Agencies may also require employees to submit a formal request, in advance, for the approved use of annual leave for medical or other purposes.

(3) Where working conditions are more strenuous or hazardous than normal office conditions, the employee, after consultation with her physician, may request temporary modification of her working conditions to protect her health and that of her unborn child.

b. Agency responsibility. (1) The agency's overall objective should be to provide gainful employment and make use of skills for as long as the employee is not incapacitated for duty.

(2) An agency should always be aware of any particular working conditions or strenuous requirements which may be a part of the work environment and which could have an adverse effect upon employees with various physical conditions. The agency should consult with an appropriate medical authority to determine if any of these elements could have a harmful effect upon the pregnant employee or the unborn child, and the employee should be advised of the medical opinion. It may be suggested that she consult her own physician on this matter.

(3) If after consulting her physician, the employee requests modification of her work duties or a temporary reassignment to other available work for which she is qualified, every reasonable effort should be made to accommodate her request. The agency may request medical certification as to the nature of the limitations which are recommended by the employee's physician.

S13-5. CONTINUED EMPLOYMENT

a. Employees planning to return to work. The agency has an obligation to assure continued employment in her position or a position of like seniority, status and pay, to the employee who wishes to return to work following delivery and confinement, unless termination is otherwise required by expiration of appointment, by reduction in force, for cause, or for similar reasons unrelated to the maternity absence. For such an employee, the total period of absence is based on appropriate medical opinion and agency authorization of appropriate leave.

Attachment 2 to FPM Ltr. 630-23 (4)

b. Employees not planning to return to work. An employee who is not planning to return to work should submit her resignation at the expiration of her period of incapacitation or she may be separated at such earlier date as may be required for other reasons, e.g., expiration of appointment or reduction in force, for cause, or for similar reasons unrelated to the maternity absence.

S13-6. GRANTING LEAVE

a. Agencies must apply the same leave policies, regulations and procedures as are applicable to requests for leave generally. Child-birth or complications of pregnancy are temporary disabilities and must be treated for leave purposes in the same manner as any other physical condition which incapacitates the employee for the performance of duty.

b. Periods of absence related to pregnancy and confinement which are not medically certified as due to incapacitation for the performance of duty may not be charged to sick leave; they must be charged to annual leave or to leave without pay if requested by the employee and approved by the leave approving official.

S13-7. ABSENCE FOR PATERNITY REASONS

A male employee may request only annual leave or leave without pay for purposes of assisting or caring for his minor children or the mother of his newborn child while she is incapacitated for maternity reasons. Approval of leave for this reason should be consistent with the agency's policy for granting leave in similar situations, and each leave request should be considered on its own merits.